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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,733

06/30/2005

Christine Wild

C 2507 PCT/US

6029

23657 7590 03/18/2008
COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

EXAMINER

AHMED, HASAN SYED

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

03/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/517,733	WILD ET AL.	
	Examiner	Art Unit	
	HASAN S. AHMED	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-35 is/are pending in the application.
- 4a) Of the above claim(s) 21,29 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-20,22-28 and 30-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/8/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of applicants' IDS, which was filed on 8 December 2004 and response, which was filed on 19 February 2008.

* * * * *

Election/Restrictions

Applicants' election without traverse of Group I and claim 22 in the reply filed on 19 February 2008 is acknowledged.

Claims 21, 29, and 33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 19 February 2008.

* * * * *

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 17, 22-27, 30, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,749,860 ("Tyrrell").

Tyrrell teaches an absorbent article comprising:

- the synthetic waxes of instant claim 16(a) (see col. 5, lines 30-48);

- the alkoxylated derivatives of fatty acid esters of instant claim 16(b) (see col. 7, lines 4-19);
- the polymeric waxes of instant claim 16(c) (see col. 12, lines 45-54);
- the melting point of instant claim 17 (see col. 7, line 24);
- the melting point of instant claim 24 (see col. 11, line 53);
- the silicone wax of instant claim 25 (see col. 28, line 10);
- the skincare substances of instant claim 26 (see col. 29, line 53 - col. 30, line 17);
- the water of instant claims 27 and 35 (see col. 51, line 1); and
- the polyethylene nonwoven of instant claim 30 (see col. 25, line 19);

Tyrrell explains that the disclosed composition is beneficial because it has improved transfer from the bodyfacing materials of disposable absorbent articles to the skin (see col. 1, lines 18-21).

While Tyrrell does not explicitly teach the polyvinyl stearyl ether of instant claim 22, the polyoxyethylene stearyl ether disclosed by Tyrrell (see col. 8, lines 44-45) is deemed to be its functional equivalent, since both are polyethylene stearyl ethers.

While Tyrrell does not explicitly teach the percentages of instant claims 16, 23, 25-27, or 35, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable percentages through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant percentage ranges.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose a composition comprising synthetic waxes, alkoxylated derivatives of fatty alcohols, and polymeric waxes, as taught by Tyrrell. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it has improved transfer from the bodyfacing materials of disposable absorbent articles to the skin, as explained by Tyrrelle.

*

Claims 16, 18, 19, 20, 28, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,749,860 ("Tyrrell") in view of U.S. Application No. 2002/005816 ("Hisanaka").

Tyrrell teaches an absorbent article (see above).

Tyrrell differs from the instant application in that it does not disclose the fatty acid glycerides of instant claims 18, 19, 31, and 32 or the coconut fatty acid esters of instant claims 20 and 28. However use of these compounds in compositions that are solid at

Art Unit: 1618

21°C were known at the time the instant application was filed, as evinced by Hisanaka (see paragraph 0040).

While Hisanaka does not explicitly teach the percentages of instant claim 28, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable percentages through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant percentage ranges.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose a composition comprising fatty acid glycerides, esters of coconut fatty acids, and polymeric waxes, as taught by Tyrrell in view of Hisanaka. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it has improved transfer from the bodyfacing materials of disposable absorbent articles to the skin, as explained by Tyrrelle.

* * * * *

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 16-20, 22-28, and 30-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-52 of copending Application No. 10/458,651 ('651). Although the conflicting claims are not identical, they are not patentably distinct from each other because '651 teaches a composition comprising synthetic waxes, alkoxyated derivatives of fatty alcohols, and polymeric waxes (see claim 1).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./
Examiner, Art Unit 1618

/Humera N. Sheikh/
Primary Examiner, Art Unit 1618

Notice of References Cited	Application/Control No. 10/517,733		Applicant(s)/Patent Under Reexamination WILD ET AL.	
	Examiner HASAN S. AHMED		Art Unit 1618	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,749,860	06-2004	Tyrrell et al.	424/404
*	B	US-2002/0058916	05-2002	Hisanaka et al.	604/360
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

107753-7733618

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Wild et al.
I.A. Number : PCT/EP03/05777
I.A. Filing Date: June 3, 2003
Priority Date : June 12, 2002
Title : **LOTIONS FOR NONWOVENS**

Grp./A.U. : Unknown
Examiner : Unknown

Docket No. : C 2507 PCT/US
Customer No. : 23657

CERTIFICATE OF MAILING PER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 8, 2004.

December 8, 2004
Date

Marlene Capreri
Signature of certifier

Marlene Capreri
Typed or printed name of certifier

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

INFORMATION DISCLOSURE STATEMENT

Sir:

Transmitted herewith is an Information Disclosure Statement ("IDS") in the above-referenced application, together with an IDC form listing all references cited and a copy of each reference (unless the reference is a U.S. patent application).

This IDS is being mailed within three months of filing of the above-captioned application, if it is a national application, or within three months of entering, as set forth in 37 C.F.R. § 1.491, the national stage of the above-captioned application, if the above-captioned application is an international application. Therefore, consideration of

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /HA/

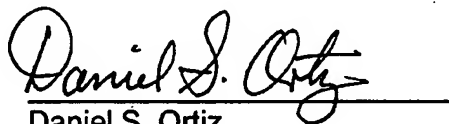
DT05 Rec'd PCT/PTO 08 DEC 2004

Docket No. : C 2507 PCT/US
Grp./A.U. :

the IDS by the Patent and Trademark Office, without the payment of any additional fee, is believed to be due under 37 C.F.R. § 1.97(b).

All the references are in English and/or are cited in an accompanying English language version of a search report by another patent office, so that comment on the references by the applicant is not required under 37 C.F.R. § 1.98(a).

Respectfully submitted,



Daniel S. Ortiz
(Reg. No. 25,123)
Attorney for Applicant(s)
215-628-1141

Cognis Corporation
Law Department
300 Brookside Avenue
Ambler, PA 19002

DSO/mc G:\IDC\C2507ids.doc

Enclosure

1. International Search Report (English Language)
2. IDC w/references

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

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*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of the form with the communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 609.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST 3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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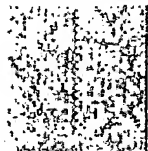
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